

School safety advisory

A SCHOOL OFFICIAL'S GUIDE

Missouri's Search & Seizure laws

**MISSOURI
ATTORNEY
GENERAL'S
OFFICE**





Dear School Official,

Recent school tragedies have raised public awareness of the safety issues school administrators must deal with on a daily basis. While illegal and dangerous actions involve only a fraction of students, school safety officers, teachers and principals must frequently act quickly and decisively to combat threats and to protect student safety. Search and seizure actions by school officials are often at issue because of the constitutional issues raised by the Fourth Amendment.



While it is important for educators and students to understand that constitutional rights are respected both on paper and in practice, it is also important for school officials to be aware of what actions can and should be taken to preserve safety and order in the schools.

This booklet addresses the most commonly asked questions about school search and seizure. The answers are for general information and guidance and in no way attempt to discuss every legal subtly and specific situation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay Nixon".

Jeremiah W. (Jay) Nixon
Missouri Attorney General



Inside

- 4** Commonly asked questions
- 5** Suspicion-based searches
- 7** Suspicionless searches
- 8** Checklists
 - Information to consider when determining whether to initiate a suspicion-based search
- 9** Information to consider when deciding to search multiple students
- 9** How to conduct a legal search
- 10** Documenting a search





Commonly asked questions

What does the Fourth Amendment say?

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Does this mean school officials cannot conduct searches and seize property when appropriate?

No. The Fourth Amendment does not bar all searches, only **unreasonable** ones. The Supreme Court has recognized that schools have a substantial interest in maintaining security and order.

What is the legal definition of a search?

A search includes any act by a teacher or administrator intruding into a person's protected privacy interests. A **protected privacy interest** usually refers to places that are not in open public view. So, if a teacher or administrator peeks, pokes or pries into a place or item shielded from public view — no matter how cursory the intrusion — a search has occurred.

A search includes, but is not limited to, opening a locker, inspecting the contents of a student's backpack, feeling an object concealed in a student's clothing, reading a student's notebook, or looking through a student's possessions after he has been ordered to empty his pockets.

No search occurs when public activities or property in public view is observed. For example, no search occurs when teachers watch students moving through school hallways, or look through a window of a student's car.

What is the legal definition of a seizure?

Seizures occur when a student's usual freedom to move is restricted, such as when a student is detained while police are called, or when officials interfere with a student's property interests, such as taking a backpack. Courts recognize that no Fourth

Amendment issues arise when students are required to attend classes, are sent to detention or the principal's office, or are directed elsewhere as part of the school's routine operations. Seizures can occur when extraordinary actions are taken.

Debate about whether an official's action is a seizure confuses the more important issue — whether the action is reasonable under the circumstances. Seizures violate the Fourth Amendment **only** when they are unreasonable. The reasonableness of seizures, like searches, depends on the circumstances, particularly whether the action is justified when it begins and is reasonable in scope.

Seizing a student's property involves less important constitutional rights than a search. The key point to remember is when grounds for a search are uncertain, it is always better to seize the student or the property and then determine whether a search is warranted.

Do all student claims of privacy implicate the Fourth Amendment?

No. The Fourth Amendment protects only legitimate privacy expectations. Privacy expectations are legitimate if they are reasonable. Such expectations are reasonable if a disinterested and objective person would reasonably conclude the conduct or property is private.

Privacy expectations are highest when contact with a person's body occurs. They become lower in relation to possessions that can be separated from a student's person. For example, a student's privacy interest in the contents of his shirt pocket is higher than it would be if the same property was kept in the student's locker.

Privacy expectations can be minimized by telling students beforehand that certain locations such as lockers or vehicles parked on school grounds are subject to random searches. Notice can reduce a student's privacy expectation, especially when the claim to privacy is not authoritatively recognized. It will not, however, reduce privacy expectations related to a student's bodily integrity.



Suspicion-based searches

When is a search reasonable?

The courts determine whether a search is reasonable by assessing whether there is reasonable suspicion to justify starting the search and whether the scope of the search is reasonable based on the suspected conduct. For example, wearing a T-shirt with a marijuana leaf design would not reasonably justify searching a student for marijuana. Likewise, strip-searching a student because a small amount of money is reported missing is unreasonable in light of the suspected conduct.

How do the courts define reasonable suspicion?

Reasonable suspicion exists when there is specific and describable conduct leading a reasonable person to conclude a student has engaged in prohibited conduct. It is more than rumor or speculation.

The key to meeting the Fourth Amendment's reasonableness test is for school officials to be able to articulate the **reasons** for their conduct. Generally, when a search is challenged, school officials fare better if they can clearly state precise reasons they knew at the time of the search justifying their suspicions.

Does a school official need to have reasonable suspicion to conduct a search during an emergency or life-threatening situation?

When an emergency occurs, immediate action may be necessary to preserve order or protect students and school personnel. The reasonable suspicion standard still applies, but courts are likely to measure official action with greater leeway. These factors should be considered:

- Is it reasonable to believe an emergency exists and that an immediate search is needed to resolve the emergency?

- Is the search motivated by an intent to end the emergency, and not the seizure of incriminating evidence?
- Is there a reasonable basis to associate the emergency with the area or place to be searched?

Is a search unreasonable because no evidence of a crime or school rule violation is discovered?

No. A search based on reasonable grounds when it starts does not become unreasonable because it fails to uncover the suspected evidence. If a court is asked to review the basis for a search, the facts known when the search starts is the issue, not whether evidence is discovered.

Is an anonymous tip sufficient to establish reasonable grounds for a search?

Generally, an isolated anonymous tip will not establish reasonable grounds to conduct a search. An anonymous tip combined with other information can establish reasonable grounds. The reasonableness of the search is linked to all of the known circumstances.

Can vehicles on school grounds be searched?

Generally, cars brought onto school property are treated like other student property. If reasonable grounds for a search exist, a car can be searched. A student's expectation of privacy regarding his car can be lessened by notifying the student that vehicles are subject to a search as a condition for the privilege of permitting the car on school grounds. One way to do this is to require students to sign a notice, or consent to the search of their vehicles as a condition for issuing a parking permit.



Can student luggage or other personal articles be searched when school activities occur off school grounds?

Yes. The same principles governing suspicion-based searches at school apply when students are not on school property, but are engaged in school-related activities such as field trips or extracurricular activities.

Can school officials read private materials found in a search?

School officials cannot search private materials unless there are reasonable grounds to believe these materials are evidence of an infraction.

Can school officials conduct pat-down or bodily searches of students?

Yes, if that type of a search is reasonable. Remember, not only must the reasons for a search be reasonable, but the way the search is conducted must be reasonable, too. Privacy expectations are higher when searches involve contact with a student's body. Pat-down and bodily searches are not barred but must be justified, so such searches should usually be limited to serious misconduct. Alternatives to body contact during a search include asking students to remove coats and outer garments before they are searched, as well as asking them to empty the contents of pockets.

What do you do if the student refuses to consent to a search?

If a student consents to a search, no Fourth Amendment issue arises. The student's consent, however, is not necessary. Officials can conduct a **reasonable** search despite the student's objections or lack of cooperation.

As a practical matter, consider these issues when a student refuses to cooperate or actively tries to impede a search:

- Avoid damaging a student's property.
- Conduct all searches privately or in a way to reduce the chance the student will resist to impress other students.

- Consider seizing the student or suspect property or securing the area while contacting the police or student's parents — especially when criminal conduct is suspected.
- Avoid using physical force unless absolutely necessary. If physical force is necessary, tell the student he has one last chance to submit peacefully before force is used. If force is used:
 - Make sure no more is used than the situation reasonably requires to restrain the student or prevent destruction of evidence.
 - Make sure adequate staff is available to control the situation.

What do you do if a student flees when he is stopped by school officials?

If a student runs away when confronted by an official or flees from the scene where suspect activity is occurring, that act is part of the overall circumstances and may justify either a search or seizure. Reasonable force can be used by officials to restrain or stop a student's flight. The force used should be the minimal amount needed to stop the student from leaving, or to prevent the student from destroying incriminating evidence.

Can school officials search visitors or their property, such as a car, while on school property?

The law in this area is undeveloped but the safe answer is "no." It is likely this issue will only arise when illegal conduct is suspected. School officials should immediately contact law enforcement and take necessary steps to ensure student safety. Such action includes ejecting such persons from school grounds. Seizing and searching visitors on school property, however, is better left to the police for safety and legal reasons.

If suspected illegal conduct is observed, school officials should document relevant information and provide it to the police.



Suspicionless searches

What is a suspicionless search?

A suspicionless search subjects students to scrutiny without suspicion that a particular student has violated a law or school rule. Suspicionless searches are sometimes referred to as sweep or generalized searches, or inspection programs.

When is a suspicionless search reasonable?

Justification for a suspicionless inspection program requires school officials to show a prior demonstrated need. A written record prepared before suspicionless searches begin is helpful.

Three factors affect the decision that suspicionless searches are necessary:

1. How often the proposed search will likely disclose the targeted conduct.
2. Prior demonstrated need for such searches (the more threatening the conduct, the less frequently it need occur to justify randomless searches).
3. Availability of less restrictive or intrusive alternatives to detect infractions.

The ultimate issue is whether the inspection policies respond reasonably to existing school problems. An inspection program that provides little benefit indicates an unwarranted invasion of legitimate privacy interests. Ill-conceived or ineffective procedures are more likely to be successfully challenged.

The courts already have ruled that the following suspicionless search procedures may be used under proper circumstances:

- Random locker searches by drug-detection dogs
- Metal detectors
- Drug-detection dogs
- Point of entry/exit inspections

Can student lockers be searched without suspicion?

Yes, if such a search program is conducted properly. Key factors to consider include:

- Document what problems exist, why an inspection program is a reasonable response to the problems, and how searches will occur.
- Students and parents should be provided with prior written notice how the inspection program will operate and why it is needed.
- Random inspections should be conducted frequently.
- A neutral selection program must be instituted to select which lockers will be searched. A neutral plan eliminates a school official's discretion to select lockers. Once a plan is adopted, all lockers must be selected according to that plan.



Checklists

The following lists help ensure that search-related decisions are reasonable. The lists are not exhaustive, but they do provide a starting point. Since all situations are different, additions and deletions should be freely made according to the facts.

Grounds to initiate a suspicion-based search exist when it is reasonable to believe that:

- A law or school rule has been or is being broken;
- A particular student has committed the violation or infraction;
- There is likely to be physical evidence (for example, contraband, evidence of the violation); and,
- The physical evidence is likely to be found in the locations searched.

Remember, “reasonable grounds” means a suspicion that is based on reasons that can be articulated. It is more than a mere hunch or supposition.

Information to consider when determining whether to initiate a suspicion-based search

Independent factors

- Was the infraction/offense observed in progress?
- Was the evidence seen?
- Training and experience of school official?
- Reputation of suspected student?
- Student's history as to similar violations?

Information provided by third parties

- Who reported the alleged violation?
Is the reporting party credible?
Does the reporting party have personal knowledge of the activity?
Does the reporting party have a reason to lie?
- Was similar or corroborating information provided by others?
- Was the information provided by the victim of an offense?

- How current is the information?
If the report has been delayed, why?
- Is the information provided by an eyewitness?
Assess likelihood that eyewitness might be mistaken (obstructed vision, distance)
- How did the person reporting the violation learn about it?
- Has the suspect admitted or bragged about the violation to others?

Information obtained from the suspected student

- How did the student act when confronted with allegations of misconduct?
- What is the student's attitude to questions about misconduct?
(**Note:** A student's refusal to consent to a search may **not** be used as evidence that he is guilty or has something to hide.)
- Can the student provide a plausible explanation for his conduct?
- Has the student made any false or misleading statements about his conduct?
- Does the student's explanation contain discrepancies or inconsistencies?
- Did two or more suspect students give conflicting stories or explanations?
- Was the student seen making secretive or unusual movements?
Can the student explain any such movements?
- Has the student given different explanations to staff members?
- Did the student refuse to obey instructions, such as refusing to remove his hands from his pockets or putting a package down?



- Was the smell of tobacco, alcohol or drugs observed on or about the student?
- Did the student appear intoxicated?

Information to consider when deciding to search multiple students

- Are there reasonable grounds that each individual searched might have the evidence sought?
- How large is the group?
- How likely is it that a member of the group has engaged in misconduct?
- How severe is the offense?
- Is the evidence sought, such as a weapon, likely to be used to harm other students?
- Can other investigative steps reduce the number of suspected students?

How to conduct a legal search

School officials are generally expected to use the least intrusive means available to accomplish the legitimate objectives of the search. The search should be no broader in scope nor longer in duration than is reasonably necessary to locate the specific object being sought.

A school official conducting a search therefore should follow a logical **plan** designed to minimize the intrusiveness of the search and complete the search as quickly as possible.

Recommended student property search process

- Tell students what you are looking for and give them a chance to surrender the item.
- Conduct searches outside the view of other students.
- Have another school official present as a witness.
- Start every search in the place where the sought-after item is most likely to be.

- Try to visually identify the item you are looking for before touching or rummaging through personal belongings.
- Feel the outside of soft-bodied containers to determine whether the sought-after object is inside before opening and exposing all of the contents.
- Stop searching when the sought-after item is found unless at that moment there are reasonable grounds to believe that additional evidence would be found if the search were to continue. For instance, if a weapons search revealed drug paraphernalia, it would be reasonable to continue a search seeking drugs or drug-related items.

Recommended process for bodily searches

- Bring student to a secure, private location away from other students.
- Make sure at least one other school official is present to assist and serve as a witness. (Officials should be the same gender as the student if at all possible.)
- Identify the object sought and give the student a chance to surrender it, unless this creates an unreasonable risk.
- Begin all searches where the object is most likely to be. If location is in outer clothing or a backpack, separate the student from the clothing or backpack before continuing the search.
- Conduct a cursory “pat-down” of the student’s clothing before reaching into a student’s pocket or waistband.
- Stop searching immediately upon finding the contraband sought, unless there are reasonable grounds justifying a further search.



Documenting a search

Record answers to these questions:

- What logical and reasonable connections are there between places searched and items sought?
 - Why was it reasonable to believe the evidence would be at the location searched?
 - When was evidence last seen or reported to be at this location?
 - Was the suspected offense/infraction ongoing or was it a "one-time" incident?
 - Did anyone see the evidence at the location to be searched?
 - Can the evidence sought be concealed at the location searched?
- Did the search cease when the particular item being sought was found? (If not, explain the reasonable grounds to believe that additional evidence of an offense/infraction would be found.)
 - If you discovered other items, were you looking in a place and in a manner likely to find the item that you originally were looking for? (If not, you must explain why you expanded your initial search.)
 - When you discovered other items, was it immediately apparent to you that the objects were contraband or evidence of an offense/infraction?



ATTORNEY GENERAL'S OFFICE

P.O. Box 899

JEFFERSON CITY, MO 65102

573-751-3321

www.moago.org

June 2003